

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRISTOPHER MATHIESON,

DOCKET NO.
1:07-cv-08527-LAK

Plaintiff/ Respondent on Counterclaim

-against-

JOHN C. DENIRO,

Defendant/
Counterclaimant

/

**ANSWER AND AFFIRMATIVE DEFENSES
OF DEFENDANT/COUNTERCLAIMANT, JOHN C. DENIRO**

Defendant, JOHN C. DENIRO (hereinafter “DENIRO”), by and through his undersigned attorneys, hereby files this his Answer and Affirmative Defenses to the Plaintiff/ Respondent on Counterclaim, CHRISTOPHER MATHIESON’s (hereinafter “MATHIESON”), Complaint filed in this matter, stating as follows:

ANSWER

1. DENIRO admits the allegations contained in paragraphs 4, 5, 8, 17, 18, 24, 65, 66, and 94 of the MATHIESON’s Complaint
2. DENIRO denies the allegations contained in paragraph 1-3, 7, 9-16, 19-23, 25-63, 68-72, 74-76, 78-81, 83-89, 91-93, 95-98, 100-103, and 105-111 of the MATHIESON’s Complaint.
3. DENIRO admits Plaintiff purports to assert claims and set venue under the statute referenced in paragraph 6 of the Complaint, but denies Plaintiff is entitled to any relief from Defendant.

4. DENIRO repeats and realleges his responses to the allegations contained in all of the foregoing paragraphs alleged in paragraphs 64, 73, 77, 82, 90, 99 and 104 of the Complaint, as if fully set forth at length herein.

5. DENIRO Does not have sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 67 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

MATHIESON breached the Operating Agreement attached as Exhibit "A" to the Plaintiff's Complaint.

SECOND AFFIRMATIVE DEFENSE

MATHIESON breached his fiduciary duties to DENIRO and to J.C. DeNiro & Associates, LLC.

THIRD AFFIRMATIVE DEFENSE

MATHIESON breached the Agreement by using funds belonging to J.C. DeNiro & Associates, LLC for personal expenses.

FOURTH AFFIRMATIVE DEFENSE

MATHIESON breached the Agreement by creating a hostile work environment.

FIFTH AFFIRMATIVE DEFENSE

MATHIESON breached the Agreement by failing to timely and appropriately pay company obligations, including but not limited to, Federal taxes, state taxes, workers' compensation insurance and liability insurance.

SIXTH AFFIRMATIVE DEFENSE

MATHIESON breached the Agreement by failing to pay company obligations to critical

vendors.

SEVENTH AFFIRMATIVE DEFENSE

MATHIESON breached the agreement by repeatedly failing to pay for rent for J.C. DeNiro & Associates, LLC.

EIGHTH AFFIRMATIVE DEFENSE

MATHIESON breached the Agreement by competing with the company in violation of Section 10.4 of the Agreement.

NINTH AFFIRMATIVE DEFENSE

MATHIESON breached the Agreement by diverting commissions due to J.C. DeNiro & Associates, LLC to himself.

TENTH AFFIRMATIVE DEFENSE

MATHIESON's action is barred by the doctrine of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

MATHIESON has failed to join an indispensable party, to wit, J.C. DeNiro & Associates, LLC.

TWELFTH AFFIRMATIVE DEFENSE

DENIRO is entitled to a setoff to any claims MATHIESON may have against himself or J.C. DeNiro & Associates, LLC.

WHEREFORE, Defendant having answered the Complaint and raised legal defenses thereto, hereby requests that this case be dismissed in its entirety, with prejudice, and requests that costs, including reasonable attorneys fees, be awarded to Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2007, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Robert S. Franklin
Robert S. Franklin, Esq.
RF-0870
ROBERT S. FRANKLIN, P.A.
823 North Olive Avenue
West Palm Beach, FL 33401
(561) 805-7140
(561) 805-7141 fax

SERVICE LIST

CHRISTOPHER MATHIESON V. JOHN C. DENIRO
DOCKET NO. 1:07-cv-08527-LAK
UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

James Cecchi, Esq.
Counsel for Plaintiff
Carella, Byrne, Bain, Gilfillan,
Cecchi, Stewart & Olstein, PC
5 Becker Farm Road
Roseland, New Jersey 07068-1739